

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 824 OF 1995**

Hausabai Sakharam Panskar (since deceased)
through his LRs ...Petitioners
Versus
Gokul Jagdale & Anr ...Respondents

Mr SP Thorat, *for the Petitioners.*
Mr PJ Shinde, *for the Respondent No. 1*

CORAM: G.S. PATEL, J
DATED: 16th November 2017

PC:-

1. Heard Mr Thorat for the Petitioners and Mr Shinde for the 1st Respondent. The 2nd Respondent is said to be a transferee from the original owner, the Petitioner, Hausabai Pansare.
2. The petition was admitted on 29th September 1995 when interim relief was granted in terms of prayer clause (c). Prayer clause (c) of the petition stays the impugned judgment which is of 26th August 1994 of the Maharashtra Revenue Tribunal, Pune-1 in MRT.NS.VII.2/91 TNS 8.151 (91).
3. These are the facts. The land in question is Gat No. 3279 in Village Masur, Taluka Karad, an area of about 1 Hectare and 39 R.

This land originally belonged to one Prabhakar. He was the husband of the Petitioner and was a tenant even prior to 1st April 1957. This date assumes significance in view of the provisions of Section 32 of the Maharashtra Tenancy And Agricultural Lands Act (“**MT&AL Act**”), because it is on this day that, shortly stated, agricultural tenants become deemed purchasers of the lands under their cultivation. It is not in dispute that the Petitioner’s husband paid various instalments of the price as determined under Section 32-G of the MT&AL Act, the last of these being paid in 1990. On his death, the Petitioner’s name was entered in the records of right as a manager of the joint family.

4. Hausabai had two sons and a daughter. Her case is that she needed to raise funds for her daughter’s marriage and that she required a loan from the 2nd Respondent, who was on good terms with her family. To secure this raising of funds, she was required to put a portion of this land — it is important that the whole of it was not so required — as a surety, and, therefore, created rights or, allegedly, a mortgage in respect of an area of 9 annas and 2 ps in favour of the 2nd Respondent. It is her case that possession continued with her at all times. There was no sale of the land. She never gave up possession. She claims that no sale was ever effected of the land in question in favour of Respondent no. 2.

5. The document in question is somewhat strange was styled as a conditional Sale Deed and is later described as a mortgage. In the petition the document is described as a conditional Sale Deed. Now Section 43 of the MT&AL Act imposes a restriction on transfers of land purchased or sold under this Act and its specifically references

deemed purchases under Section 32. Such lands are not to be sold without the previous permission of the Collector unless such permissions is not necessary, as in the case of a mortgage in favour of a Government or certain other specified entities. Section 43(1) of the Act does not limit itself to a sale but includes a gift, exchange, mortgage, lease or assignment; in other words it prohibits all such purported transfers without previous permission.

It appears from record that the Talathi Masur submitted a report to the Tahsildar, Karad on 28 December 1987 saying that the husband of the Petitioner purchased the land and had thereafter sold a 0-9-2 share to the 2nd Respondent by a conditional sale deed dated 31 May 1984. It was alleged that there was a Mutation Entry 1590. There was, therefore, an alleged contravention and violation of Section 43 of the MT&AL Act. The tenancy Awal Karkun, Karad, who I will assume had jurisdiction, though this is somewhat unclear, initiated what he himself described as a *suo motu* inquiry under Section 84C of the MT&AL Act.

6. It was alleged that notices had been served on the Petitioner and on the 2nd Respondent but that neither remained present during the inquiry and the case proceeded in what is described as an *ex parte* fashion. To begin with this is wholly incorrect because neither side was present and it being a *suo motu* enquiry, I do not think it was remotely proper for any authority entrusted with adjudicatory powers to continue in this fashion. Apart from anything else this is a quite unacceptable blurring of well-defined legal boundaries between who is the complainant and who the respondent. The Aval Karkun could not, unless he was personally

invested in the matter have taken so deep an interest in it; and if he had the slightest personal interest, he was not only bound to disclose it, but could not have proceeded further.

7. That apart, it appears that without any explanation being available before him, the Awal Karkun proceeded to hold that there was a valid panchnama made by the Talathi on 11th August 1989 and that possession had been delivered to the 2nd Respondent, thus resulting in a violation of Section 43 of the MT&AL Act. Resultantly, the Awal Karkun held the transaction to be invalid under Section 84C and declared the transaction invalid. He then proceeded to say that that portion of the land admeasuring 0-9-2 was forfeited to the Government.

8. It is obvious that this was a quite astonishing manner in which to proceed, especially when the record before the authority itself showed that neither transferor nor transferee was present, and that other than one solitary attempt, nothing was done to secure their presence. The fact that the Petitioner was an illiterate widow seems to have wholly escaped the Awal Karkun, if ever he was concerned about it.

9. It seems that thereafter Respondent No.1, one Jagdale, also of Masur, made an application on 1st December 1989 indicating his willingness to accept the forfeited land for the price fixed under Section 63-A of the MT&AL Act. There was apparently an application on the very next day, 2nd December 1989, from villagers saying that no objection. The sheer speed of all of this in a

Government office is astonishing, to put it mildly, and particularly when we see that the Talathi took a good three years to come alive to the alleged mutation entry which began the whole process in the first place. Jagdale's application was allowed and the forfeited land was apparently allotted to him.

10. It is at this stage that Hausabai moved a revision under Section 75 of the MT&AL Act before the Sub Divisional Officer, Satara. That resulted in an order of 28 May 1991 a copy of which is at Exhibit "C".

11. This order is remarkable for a number of reasons. To begin with, it is the first order up to this point that is as thorough as it is careful and considerate. It is the first order that looks beyond the mere papers to the positions of the parties. It is the first order that discerns what actually passed and against whom greater injustice was caused. It is the first order that correctly gains a whiff of fraud, and then follows that dark trail. As we shall see, it is also, unfortunately, the last order to have done any of this.

12. The SDO correctly noted the background facts. He also noted that Hausabai had actually applied for an adjournment before the Awal Karkun and a fresh date was fixed on 16th June 1989 when she applied for time again. No fresh notice was served on her and a panchnama was apparently drawn up on 11th August 1989, following which the Tenancy Awal Karkun passed an order without hearing either Hausabai or 2nd Respondent, forfeiting this fractional portion of the land to the Government. A mutation entry followed on 1st

September 1989 showing the possession of the Government, but this was again without notice to Hausabai. This mutation entry was certified on 29th September 1989. On 4th November 1989 the Tahsildar issued a public notification for disposal of this land and the last date for submission of the application was 15th December 1989. Jagdale applied on 1st December 1989. His application was received by the Talathi the very next day along with no objection. On 2nd January 1990, a grant was issued in favour of Jagdale and he was asked to attend the Tahsildar's office on 18th January 1990. His statement was recorded the next day on 19th January, 1990 and this resulted in the order of the Tahsildar to which I have earlier referred. Jagdale claims he took possession of 3rd February 1990. It seems that it was at this time that Housabai was sought to be dispossessed and she therefore approached the SDO in revision. As it happens she receives interim protection in regard to her possession and ultimately after a few dates the matter was heard. Both sides argued before the Sub Divisional Officer. Jagdale said that the procedure followed in the courts below was perfectly legal, that Hausabai had breached the provisions of Section 43, possession was taken by the Government and that the subsequent grant to Jagdale could not be upset.

13. The SDO evidently went through a very great deal of trouble in studying the papers. He noted that despite the document, there was no transfer properly so-called to the 2nd Respondent, and that Housabai at all times continued in possession of the land. The so-called mortgage was of the year 1984 but of the mutation entry that triggered the first report of the Talathi Masur, i.e., Mutation Entry 1590, no notice was given to Hausabai. It was not until four years

later in 1989 when she was summoned by the Awal Karkun that she first received intimation of some proceedings but that notice did not specify the purpose and, the SDO held, that it was probably difficult for Hausabai to have understood the gravity of the problems before her. Hausabai was thus not present before the Awal Karkun and everything proceeded from that point on in her absence. The one thing that continued with her was physical possession of the land. Barring one panchanama said to have been prepared by the Talathi on 11th August 1989, there was no other document before the Awal Karkun to conclude that anyone other than Hausabai was in possession.

14. The SDO was emphatic in his findings. He said the panchanama was fake. He also said that the original order by the Awal Karkun was baseless and that the so-called mortgage by which no possession was delivered was not a breach of the conditions of Section 43 of the MT&AL Act. He also found that there was no verification of the documents by the lower court nor an opportunity given to Hausabai. The record summoned by the Talathi was not before the lower court and despite all this the Awal Karkun proceeded to pass an order as extreme as one of forfeiture.

15. I can do no better at this stage than to quote directly from paragraph 3 of the SDO order, simply because it is not often that one sees such observations in orders of Revenue Authorities. Paragraph 3 at page 26 reads thus:

“In my experience, nowhere each persons from revenue department have show unexpected promptness to decide the matter for miscarriage of justice. The order is passed by

Ten.A.K. on 22-8-89 for forfeiture of land and the panchnama at page 25 shows that there is not possession of opponent and the panchanama is made on 4-9-89 but which is recorded by Talathi on 4-8-89. No notice of handing over possession is given to the landlady."

16. The SDO also doubted whether adequate publicity was then given to the further disposal of the land. He concluded that the entire application was managed. He went on to find that on 2nd January 1990 a letter seems to have been issued of which there was a carbon copy on file but on which a date had been added separately by ink afterwards and after the statement of Jagdale was recorded. This statement of 19th January 1990 was, very surprisingly, said to have been received by the Tahsildar a good month and a half *earlier* on 2nd December 1989. Clearly, this was inconceivable and the SDO went on to say, quite correctly in my view, that there was adequate proof to show that all the documents and statements was managed by the Revenue Authorities in collusion with Jagdale to whom the grant was subsequently issued and the records were all prepared on 2nd December 1989 but post-dated to January 1990. As regards the question of occupancy price, how and when this was decided remained unknown. No notice of delivery of possession was given to Hausbai. All transactions were behind her back. Finally there are these observations at page 28 in the concluding portion. These read thus:

"In short, the present litigation has a checkered history, due collusion of revenue officers with the opponent No. 3. The words are used with much care. Because of the unwarranted procedure adopted by the tenancy Aval Karkun and the Tahsildar Karad, great injustice is caused

to a poor illiterate Appellant. For which a separate departmental action is to be taken against the Tahsildar for creating a fake record.

In addition both the orders issued by Tenancy Awar Karkun for forfeiture to Government and Tahsildar order to grant the land is illegal and null and void. Hence it is set aside. As regards the occupancy price paid by Opponent No. 2, the Appellant has express willingness to pay Rs.3500/- to be auction purchaser. Hence the order as under:-

ORDER

The appeal is allowed with cost and the orders passed by Tenancy Awar Karkun on 22-8-89 and Tahsildar Karad on 23-1-90 are set-aside. The position of mutation entry 1590 should be maintained on record of right and the possession of Appellant is accepted on the suit land.

Sd/- xxxxx

Sub Divisional Officer

Satara: Satara Sub Division, Satara.

28.5.91.

17. Jagdale took this order to the Maharashtra Revenue Tribunal (“MRT”). I have considered that the order of 26th August 1994 with a very great deal of care. I am wholly unable to understand how the MRT could have done what it did. It proceeded entirely on the basis that the application before the Sub Divisional Officer apparently under Section 74 of MT&AL Act was beyond the 60-day limitation period. It said that the SDO could not have called for the record and that in doing so his order was illegal and unjust. What the MRT order entirely overlooks is that the proceedings before the

SDO were, to put it simply, a case of fraud. The essence of fraud is concealment. The SDO's finding, in the clearest possible terms, is that the authorities and Jagdale were straining every nerve to keep Hausabai in the dark, and in this enterprise they had, until the stage of the SDO, succeeded admirably. It is inconceivable that any authority could say that a one-year limitation should begin to run from the date of an entry unknown to the applicant and made behind her back, and the knowledge of which was deliberately kept from her. There is no assessment whatsoever in the MRT order of the matter on merits. It proceeds entirely on the basis of an interpretation of Section 76-A of the MT&AL Act and the first proviso to that section. What the order overlooks is that implicit in this proviso is that the date of the order from which time begins to run must be an order that is *known* to the person seeking revision and must be made with notice and after hearing. This limitation has no application whatsoever in the case of a fraud, for fraud vitiates everything. The approach of the MRT is entirely incorrect. What the MRT ought to have done, at best, was to remand the matter to the SDO for a consideration of the question of limitation. That question, as we have seen, was never agitated before the SDO and, therefore, the MRT committed the second previous error: it set aside the SDO's order on a ground never urged, argued or decided by the SDO. From either perspective the order of the MRT is wholly unsustainable.

18. Mr. Thorat relies on the decision of this court in *Waman Ataram Lavand & Anr v Dattatraya Alias Dattu Baba Lavand & Ors*¹ and the Supreme Court in *Mohamad Kavi Mohamad Amin v*

1 2009 (5) Mh LJ 442.

*Fatmabai Ibrahim*² for the proposition that where no time is fixed under Section 84C, proceedings should be initiated within a reasonable time. He does so, of course, to urge that the initial proceedings before the Awal Karkun was so delayed as to be completely meaningless and not sustainable. In the *Waman Atmaram Lavand* judgment, there was a gap of six years and a learned Single Judge of this Court (Smt NN Mhatre J as she then was) said that the initiation of proceedings is under Section 84C, where no limitation is prescribed, must be within a reasonable time. That decision relied on the Supreme Court decision in *Mohamad Kavi*.

19. The only question now is whether the matter should once again be remanded to the Maharashtra Revenue Tribunal for consideration afresh on merits. I do not believe that any useful purpose would be served by this course of action. It was for the MRT in its first instance to not have restricted itself to this superficial examination on limitation, but, especially given the uncommonly strong wording of the SDO order, to have looked more carefully into the merits of the case. The SDO's finding is that possession continued with Hausabai and this was protected. It is also true that Jagdale's name is now entered on the 7/12 extract. There may be a civil proceeding by either Hausabai's heirs or by Jagdale (or perhaps both) for possession but that civil action will have to be allowed to continue on its merits unaffected by these proceedings.

2 (1997) 6 SCC 71

20. The impugned order is quashed and set aside. Rule is made absolute in terms of prayer clause (a). The petition is disposed of in these circumstances.

21. It is only because of the fairness of Mr Shinde's approach for the 1st Respondent that I will not make an order of costs.

(G. S. PATEL, J)